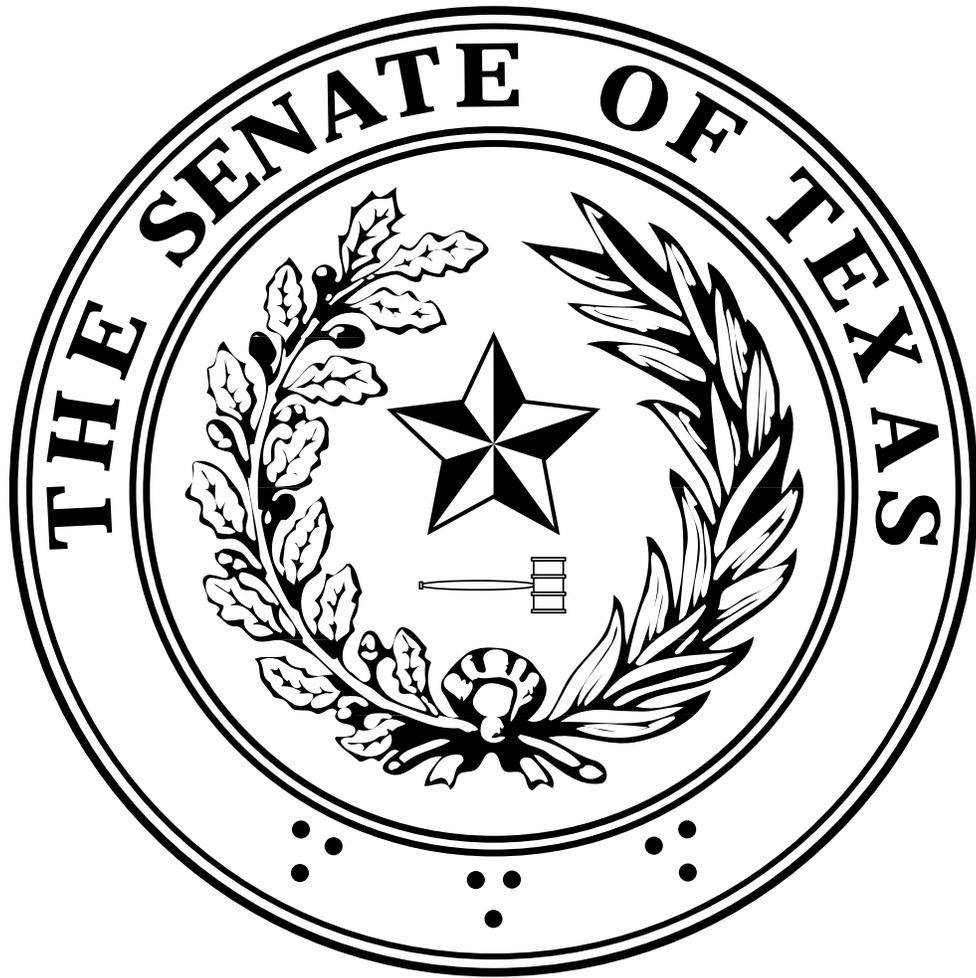


Senate Committee on State Affairs  
Report to the 77th Legislature



Charge 6

Sale of Motor Vehicles by Licensed Dealers

## **Acknowledgments**

This report would not have been possible without the expert assistance of Gail Anderson, Executive Assistant, and Brett Bray, Director, Motor Vehicle Division of the Texas Department of Transportation. In addition, the Committee wishes to thank everyone who took the time to provide testimony on this charge, including Tom Blanton, Texas Automobile Dealers Association; Duane Kyrish, Texas Truck Dealers Association; Nick England, Lasseter Bus Company, Inc.; Darryl Rickaway, Texas Bus Sales, Inc; John McBeth, Texas Transit Association; Michael Plaster, Texas Transit Association; Susan Potts, Freightliner, Inc.; Michael Kastner, National Truck Equipment Association; and Ray DeArrigunaga, VIA Metropolitan Transit Authority.

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## **Executive Summary**

### **The Charge:**

Study whether certain types of vehicles such as buses for mass transit, EMS and fire fighting vehicles, and heavy trucks should be subject to all of the licensing requirements applicable to automobile dealers.

### **Findings:**

- (1) The Motor Vehicle Code (Code) provides a very detailed regulatory structure that applies to all vehicles and all people who are in the business of selling or repairing vehicles. Licensed dealers are an essential component of this structure. As operators of in-state businesses, licensed dealers provide the necessary link to enable the Texas Department of Transportation to enforce provisions of the Code against out-of-state manufacturers. The absence of licensed dealers would severely limit the state in its ability to enforce protective measures for purchasers of vehicles such as buses for mass transit, EMS and fire fighting vehicles, and heavy trucks.
- (2) An amendment to the Lemon Law last session limited the authority of the Motor Vehicle Board (Board) to order manufacturers to replace, buy back, or repair defective vehicles. Only new vehicles purchased or leased from licensed Texas dealers are covered now under the law; vehicles purchased without the inclusion of a licensed dealer are not. For purchasers to retain the protections afforded by the Lemon Law, they must purchase their vehicles through licensed dealers.
- (3) The Lemon Law's protections are limited because they cover a vehicle's defects only for a specified amount of miles or number of months of ownership. While many more miles or months may be covered through a manufacturer's warranty, repairs sought under a manufacturer's warranty are usually obtained through local, licensed dealers, due to the purchasers' proximity to and familiarity with those dealers. The Code prohibits manufacturers from acting as dealers, thereby requiring manufacturers to establish dealers as their

in-state representatives. For these reasons, the law properly authorizes the Board to hold licensed dealers responsible for defective motor vehicles, including buses for mass transit, EMS and fire fighting vehicles, and heavy trucks.

- (4) Competitive bidding through licensed dealers keeps down the price of all motor vehicles, including buses for mass transit, EMS and fire fighting vehicles, and heavy trucks.
- (5) Licensed Texas dealers contribute to the Texas economy by maintaining places of business in the state, employing a Texas workforce, and paying state and local taxes. Purchases of buses for mass transit, EMS and fire fighting vehicles, and heavy trucks from local, licensed dealers maintains that contribution.

**Recommendation:**

The committee recommends that all vehicles should be subject to the licensing requirements applicable to automobile dealers. Testimony taken in committee did not provide sufficient evidence to remove any vehicle from the regulatory framework in Texas law. This framework provides valuable links between Texas consumers and out-of-state manufacturers, in which dealers serve as responsible intermediaries. It would not be advantageous to remove the current safeguards which protect consumers against warranty problems or defective vehicles.

Furthermore, the committee recommends continued examination of the role of licensed dealers in the state's regulatory structure, especially as it pertains to sale of automobiles over the Internet.

## **Senate Committee on State Affairs**

Lieutenant Governor Rick Perry charged the Senate Committee on State Affairs “with studying whether certain types of vehicles such as buses for mass transit, EMS and fire fighting vehicles, and heavy trucks should be subject to all of the licensing requirements applicable to automobile dealers.”<sup>1</sup> In fulfilling the directive, the committee held a public hearing in Austin on October 28, 1999, to take testimony from interested parties, including mass transit associations, bus manufacturers, and vehicle dealers. No testimony received by the committee suggested removing the requirement that a licensed automobile dealer be involved in the sale of EMS and fire fighting vehicles and heavy trucks, therefore this report focuses on the role of automobile dealers in the purchase of buses. This report summarizes the testimony received and contains the findings of the committee.

### **Introduction**

Section 1.02, Article 4413 (36), V.T.C.S., states:

The distribution and sale of motor vehicles in this State vitally affects the general economy of the State and the public interest and welfare of its citizens. It is the policy of this State and the purpose of this Act to exercise the State’s police power to insure a sound system of distributing and selling motor vehicles through licensing and regulating manufacturers, distributors, converters, and dealers of those vehicles, and enforcing this Act as to other persons, in order to provide for compliance with manufacturer’s warranties, and to prevent frauds, unfair practices, discriminations, impositions, and other abuses of our citizens.

In Section 4.01, Article 4413 (36), V.T.C.S., any person in Texas acting as a dealer, manufacturer, distributor, converter, representative, lessor, or lease facilitator must obtain a license. Bus manufacturers who want to extend a bid to a Metropolitan Transit Authority (MTA) or municipality to contract for the sale of

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<sup>1</sup> Letter from Lieutenant Governor Rick Perry to the Senate Committee on State Affairs, September 7, 1999.

buses must have a franchised dealer representative in Texas for that purpose.<sup>2</sup> According to the Texas Department of Transportation's (TxDOT) records, there are 23 licensed bus dealers in Texas. The records also show that Texas has no in-state bus manufacturers. There are, however, 13 out-of-state bus manufacturers licensed to have their vehicles sold in Texas.<sup>3</sup>

Bus manufacturers who bid directly to contract for the sale of buses in Texas without a dealer are subject to sanctions by the Motor Vehicle Board (Board).<sup>4</sup> In FY 1999, six complaints against bus manufacturers were filed with TxDOT's Motor Vehicle Division concerning alleged violations of the statutory prohibition against direct bidding. One complaint was dismissed, but the remaining five were settled through agreements by the parties which included the payment of civil penalties by the bus manufacturers.<sup>5</sup>

Motor vehicle dealers are an integral part of the Texas Motor Vehicle Commission Code (Code), found in Article 4413(36), V.T.C.S. Regulations pertaining to dealers of mass transit buses, EMS and fire fighting vehicles, and heavy trucks have been included in the Code since its inception in 1971.<sup>6</sup>

The Code requires any individual acting as a motor vehicle dealer in Texas to obtain a dealer's license.<sup>7</sup> The only exception is for persons who sell five or fewer vehicles in one year, presumably because they are not regularly and actively engaged in the business of selling vehicles.<sup>8</sup> TxDOT's ability to regulate the

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<sup>2</sup> Section 5.04(a), Article 4413(36), V.T.C.S.

<sup>3</sup> Provided by Gail Anderson, Executive Assistant, Motor Vehicle Division, Texas Department of Transportation.

<sup>4</sup> Section 4.06, Article 4413(36), V.T.C.S.

<sup>5</sup> Provided by Gail Anderson, Executive Assistant, Motor Vehicle Division, Texas Department of Transportation.

<sup>6</sup> Chapter 51, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4413(36), Vernon's Texas Civil Statutes).

<sup>7</sup> Section 4.01(a), Article 4413(36), V.T.C.S.

<sup>8</sup> Section 503.024, Transportation Code.

automobile industry depends on its licensing authority. In fact, most consumer protections relating to the purchase of vehicles are enforced through the regulation of licensed dealers.

Prior to the 76th Legislative Session, the Lemon Law authorized the Board to order manufacturers to replace, buy back, or repair all new vehicles that were defective if they were physically located in the state.<sup>9</sup> The 76th Legislature amended the 17-year-old law by limiting applicability of the statute to new vehicles that have been purchased or leased only through a licensed Texas dealer.<sup>10</sup> Vehicles purchased outside Texas are no longer covered by the statute, even if they are physically located in Texas at the time the defect is discovered, because they were not purchased in Texas through a licensed motor vehicle dealer.

Although the Lemon Law provides consumers who purchase new but defective vehicles with recourse against dealers and manufacturers, the law is not omnipotent. The Lemon Law's protections are limited because they only cover a vehicle's defects for a specified amount of miles or number of months of ownership.<sup>11</sup> Many more miles or months may be covered through a manufacturer's warranty. Nevertheless, due to their proximity to and familiarity with dealerships, consumers are more likely to take their defective vehicles to dealerships rather than manufacturers for repairs. The Code prohibits manufacturers from acting as dealers,<sup>12</sup> thereby requiring manufacturers to establish dealers as their in-state representatives. For these reasons, the law properly authorizes the Board to hold licensed dealers responsible for defects in all motor vehicles, included buses for mass transit, EMS and fire fighting vehicles, and heavy trucks.

The trend in recent years has been to add, rather than subtract, types of vehicles covered by the Code, and therefore, the state's consumer protection laws. In 1997,

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<sup>9</sup> Section 6.07, Article 4413(36), V.T.C.S.

<sup>10</sup> Chapter 962, Acts of the 76th Legislature, Regular Session, 1999 (Article 4413(36), Vernon's Texas Civil Statutes).

<sup>11</sup> Section 6.02, Article 4413(36), V.T.C.S.

<sup>12</sup> Section 5.04(a), Article 4413(36), V.T.C.S.

the Legislature added towable recreational vehicles to the Code, giving purchasers of these non-motorized travel trailers the same protections afforded to any person who buys a new vehicle from a licensed dealer in Texas.<sup>13</sup>

## **76th Legislative Session**

During the past legislative session, the Senate Committee on State Affairs heard SB 1146, which attempted to remove the necessity for licensed dealers to participate in bus sales by allowing out-of-state bus manufacturers to sell directly to Texas municipalities, transit authorities, and other governmental entities (see Appendix I). The bill was left pending before the committee. Subsequently, an amendment similar to the language of S.B. 1146 was offered to another bill, H.B. 3092, when it came before the committee for consideration (see Appendix II). The amendment was not adopted.

## **Proponents of the Current Law**

The Motor Vehicle Code provides a very detailed regulatory structure that applies to all vehicles and all people who are in the business of selling or repairing vehicles.<sup>14</sup> Opponents of the law argue that buses are different from other vehicles because they are bigger and more costly, and federally regulated and tested.<sup>15</sup> Proponents base their arguments for maintaining the current statute on the premise that buses are not so different from cars and trucks that an exception from the current law is necessitated.<sup>16</sup> While buses are sold *primarily* to governmental entities, cars and trucks also are sold to governmental entities every day. Furthermore, cars and trucks also are required to adhere to federal standards,

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<sup>13</sup> Section 1.03(25)(D), Article 4413 (36), V.T.C.S.

<sup>14</sup> Chapters 36 and 36(a), Article 4413, V.T.C.S.

<sup>15</sup> 49 U.S.C. Section 5323 (c).

<sup>16</sup> Tom Blanton, Vice President for Legislative Affairs, Texas Automobile Dealers Association, testimony presented to the Senate Committee on State Affairs, October 28, 1999.

including stringent testing, prior to their sale.<sup>17</sup>

Supporters offered the following reasons for maintaining the current statute:

- Bidding through a licensed dealer keeps down the price of the buses. Direct sale does not necessarily save the consumer money; it simply increases the amount of money made by out-of-state manufacturers at the expense of local dealers and their employees. Dealers fight for the business and, therefore, force manufacturers to remain competitive and keep prices down.<sup>18</sup>
- Licensed dealers provide a necessary link for TxDOT to enforce state law against out-of-state manufacturers. TxDOT can attempt to force out-of-state manufacturers to comply with the statute by levying fines against them for failure to take action on consumer complaints. The agency, however, would be more successful enforcing the statute by holding Texas-based dealers accountable for redress against warranty complaints by consumers. Licensing ensures the state has an opportunity to protect Texas consumers from noncompliant businesses that violate the Code, whether the consumer is a private individual or corporation, or a municipality, transit authority, or other governmental entity.<sup>19</sup>
- Licensed, Texas dealers maintain places of business in the state, employ a Texas workforce, and pay state and local taxes. A bus manufacturer in Kansas may pay federal taxes, but it does not pay property taxes in Texas.<sup>20</sup>

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<sup>17</sup> 49 U.S.C. Chapter 301.

<sup>18</sup> Darryl Rickaway, Owner, Texas Bus Sales, Inc., in Houston, testimony presented to the Senate Committee on State Affairs, October 28, 1999.

<sup>19</sup> Duane Kyrish, representing the Texas Truck Dealers Association, testimony presented to the Senate Committee on State Affairs, October 28, 1999.

<sup>20</sup> Nick England, President, Lasseter Bus Company, Inc., in Lewisville, testimony presented to the Senate Committee on State Affairs, October 28, 1999.

## Opponents of the Current Law

According to opponents, current law does not conform to current practices. They suggest that exempting large, purpose-built vehicles from regulations pertaining to vehicle dealers would simply codify procedures developed by mass transit authorities over the past 25 years. The public transit community regularly purchases smaller vehicles through the state's auto-dealer network, as required by the Code. Conversely, these entities purchase large, purpose-built buses (larger buses custom-designed and manufactured from the ground up for the public transit market), directly from manufacturers, contrary to the Code.<sup>21</sup>

Opponents offered the following reasons for amending current law:

- Protections for consumers already exist in the federal regulations regarding the sale of buses. Mass transit bus purchases are procured through a process mandated by the Federal Transit Administration (FTA). Typically, metropolitan transit authorities use the *Standard Bus Procurement Guidelines*, a document produced by the American Public Transportation Association. Since 80 percent of a bus procurement is paid for with federal dollars, the FTA requires that a prototype for all mass transit vehicles pass inspection at a testing facility in Pennsylvania.<sup>22</sup>
- Dealers are not generally equipped to perform warranty work on special transit buses. Since mass transit authorities use several criteria when placing orders for buses, these vehicles are typically built according to the individual MTA's specifications. The MTAs themselves employ trained staff to execute the warranty work on all transit vehicles. VIA Metropolitan Transit Authority in San Antonio,

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<sup>21</sup> John McBeth, General Manager, Brazos Transit District, and Legislative Affairs Chair, Texas Transit Association, testimony presented to the Senate Committee on State Affairs, October 28, 1999.

<sup>22</sup> Ibid.

for instance, performs all warranty work on its own property and then recovers directly from the manufacturer all costs associated with that work.<sup>23</sup>

- The current law stifles competition. Transit vehicles are in high demand throughout the country and manufacturers may pass on bidding a procurement solicitation in Texas because authorities in other states which do not require involvement by licensed dealers may be easier to supply.<sup>24</sup>
- There are less than 10 major manufacturers (none in Texas) who build the purpose-built coaches. The industry is small, similar to a small community, and a manufacturer who dissatisfies a customer will lose business quickly.<sup>25</sup>
- MTAs must go out-of-state to acquire purpose-built buses. Typically, MTAs receive about five bids in response to their Requests for Proposals. The cost difference between the various bids is marginal, but it is sure to increase with the inclusion of dealers. A 200-bus purchase can total more than \$50 million. Adding an intermediary would only add to the cost of doing business for both manufacturers and public transportation agencies.<sup>26</sup>

The above arguments, however, do not take into consideration important factors. To protect consumers against defective and unsafe vehicles, the federal government mandates testing of *all* vehicles, from the biggest bus to the smallest car. It is through licensed dealers that TxDOT pursues grievances against manufacturers, including reimbursements by bus manufacturers to MTAs for

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<sup>23</sup> Ray DeArrigunaga, Assistant General Manager, VIA Metropolitan Transit Authority in San Antonio, testimony presented to the Senate Committee on State Affairs, October 28, 1999.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

warranty work.

Finally, no evidence was presented detailing how the current law stifles competition nor how much the cost of a bus would increase due to dealer involvement. In response to a committee request for a cost-benefit analysis to address this concern, the Texas Transit Association explained that the association was unable to put a dollar figure on the assumed increase in cost because, “[W]hen it comes to cost-benefit analyses of bus purchases, this practice has dropped significantly due to a familiarity with the few manufacturers and their products on the market, competitive procurement, and studies conducted by national organizations....”<sup>27</sup>

According to the association, the cost of the bus is not as important to transit agencies as whether the purchase is “the appropriate vehicle for a given market.” In other words, are the transit agencies “providing the *appropriate* size and type of vehicle to the market of riders and their specific local conditions, such as neighborhoods [sic], commercial areas, commuter routes, to be served by a transit system.”<sup>28</sup>

## Findings

- (1) The Motor Vehicle Code (Code) provides a very detailed regulatory structure that applies to all vehicles and all people who are in the business of selling or repairing vehicles. Licensed dealers are an essential component of this structure. As operators of in-state businesses, licensed dealers provide a necessary link for the Texas Department of Transportation to enforce provisions of the Code against out-of-state manufacturers.
- (2) An amendment to the Lemon Law last session limits the authority of the Motor Vehicle Board (Board) to order manufacturers to replace,

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<sup>27</sup> Letter from Michael Plaster, Executive Director, Texas Transit Association, to the Senate Committee on State Affairs, January 24, 2000.

<sup>28</sup> Ibid.

buy back, or repair defective vehicles. Only new vehicles purchased or leased from licensed Texas dealers are covered now under the law; vehicles purchased without the inclusion of a licensed dealer are not. For motor vehicle purchasers to retain the protections afforded by the Lemon Law, they must purchase their vehicles through licensed Texas dealers.

- (3) The Lemon Law's protections are limited because they cover a vehicle's defects only for a specified amount of miles or number of months of ownership. While many more miles or months may be covered through a manufacturer's warranty, repairs sought under a manufacturer's warranty are obtained through local dealers due to the purchasers' proximity to and familiarity with those dealers. The Code prohibits manufacturers from acting as dealers, thereby requiring manufacturers to establish dealers as their in-state representatives. For these reasons, the law properly authorizes the Board to hold licensed dealers responsible for defects in all motor vehicles, including buses for mass transit, EMS and fire fighting vehicles, and heavy trucks.
- (4) Competitive bidding through dealers keeps down the price of all motor vehicles, including buses for mass transit, EMS and fire fighting vehicles, and heavy trucks.
- (5) Local licensed dealers contribute to the Texas economy by maintaining places of business in the state, employing a Texas workforce, and paying state and local taxes. Purchases of buses for mass transit, EMS and fire fighting vehicles, and heavy trucks from licensed dealers maintains that contribution.

## **Recommendations**

The committee recommends that all vehicles should be subject to the licensing requirements applicable to automobile dealers. Testimony taken in committee did not provide sufficient evidence to remove any vehicle from the regulatory framework in Texas law. This framework provides valuable links between Texas

consumers and out-of-state manufacturers, in which dealers serve as responsible intermediaries. It would not be advantageous to remove the current safeguards which protect consumers against warranty problems or defective vehicles.

Furthermore, the committee recommends continued examination of the role of licensed dealers in the state's regulatory structure, especially as it pertains to sale of automobiles over the Internet.